

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

In Re *Ex Parte* Application of Volkswagen AG and Audi AG,

Applicants,

For an Order Pursuant to 28 U.S.C. § 1782
Granting Leave to Obtain Discovery for Use
in Foreign Proceedings.

Case No. _____

***EX PARTE APPLICATION OF VOLKSWAGEN AG AND AUDI AG
FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 GRANTING LEAVE
TO OBTAIN DISCOVERY FOR USE IN FOREIGN PROCEEDINGS***

Applicants Volkswagen AG and Audi AG (“Applicants”) submit this *Ex Parte* Application for an Order to Obtain Discovery for Use in Foreign Proceedings pursuant to 28 U.S.C. § 1782(a) from Network System Technologies, LLC (“NST”) and Thomas Louriero. Applicants seek an order to authorize subpoenas requiring NST and Thomas Louriero to provide specific documents and make themselves available for deposition for use in connection with three foreign patent litigations before the Unified Patent Court, Case Nos. ACT_597691/2023, ACT_597692/2023, and ACT_597693/2023 (collectively, “NST UPC Litigations”). As explained in Applicants’ accompanying Memorandum of Law, NST maintains its principal place of business in Portland, Maine, and Mr. Louriero, a resident of Portland, Maine, is one of NST’s two principals and is personally involved in NST’s operations. The document and deposition subpoenas proposed to be served on NST and Thomas Louriero in substantially similar form are attached to this Application as Exhibits A-D. This application is supported by an accompanying Memorandum of Law and the Declaration of Prof. Dr. Tilman Müller-Stoy (“Müller-Stoy Decl.”), filed concurrently herewith.

This application is brought on an *ex parte* basis. Courts in the First Circuit routinely handle § 1782 requests on an *ex parte* basis. *See In re Schlich*, 893 F.3d 40, 51 (1st Cir. 2018) (citing

Gushlak v. Gushlak, 486 F. App'x 215, 217 (2d Cir. 2012) (noting that “it is neither uncommon nor improper for district courts to grant applications made pursuant to § 1782 *ex parte*”); *In re Attorney General of Quebec*, No. 1:21-mc-00264-JCN, 2021 WL 4497145, at *3 (D. Me. Sept. 30, 2021) (granting *ex parte* motion to take discovery pursuant to 28 U.S.C. § 1782).

Applicants satisfy each of the three statutory requirements set forth in 28 U.S.C. § 1782(a). First, the respondents from whom discovery is sought—NST and Thomas Louriero—are both found within the District of Maine. Second, the discovery sought by Applicants is “for use” in the NST UPC Litigations, as described in the accompanying Memorandum of Law and supporting declaration. Third, Applicants are interested entities because they are named defendants in those litigations.

Further, each of the discretionary factors established in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004) favor granting this Application. First, Thomas Louriero is not a party to the NST UPC Litigations, and this favors the Court granting § 1782 discovery as to him. Further, although NST is of course a participant in the UPC litigations it filed, discovery as requested herein cannot be compelled to the extent allowed under § 1782 in Unified Patent Court litigation, and thus this Application constitutes the only practical and timely method for obtaining the needed evidence for use there. Second, there is no indication that the foreign tribunal would be unreceptive to the evidence. Third, the documentary and testimonial evidence sought through this Application would likely be admissible in the NST UPC Litigations and does not otherwise circumvent any proof-gathering restriction under the laws of Germany or other laws or regulations governing the Unified Patent Court. Fourth, the discovery sought through this Application is not unduly intrusive or burdensome because it is of limited scope and carefully tailored to issues in the NST UPC Litigations.

Accordingly, for the reasons described in the accompanying Memorandum of Law and supporting declarations, Applicants respectfully request that the Court issue an Order in the proposed or substantially similar form attached hereto as Exhibit 1: (1) granting judicial assistance pursuant to 28 U.S.C. § 1782, and (2) authorizing Applicants to serve subpoenas including discovery requests in substantially similar form as those attached hereto as Exhibits A-D.

Dated: March 4, 2024

By: /s/

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